

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3
4 In the matter of the amendment)
5 of ARM 17.8.101, 17.8.102,)
6 17.8.103, 17.8.106, 17.8.110,)
7 17.8.302, 17.8.401, 17.8.402,)
8 17.8.801, 17.8.802, 17.8.818,)
9 17.8.819, 17.8.821, 17.8.901,)
10 17.8.902, 17.8.905, 17.8.1002) **PRESIDING OFFICER**

11 **REPORT**

12 17.8.1201, 17.8.1202,)
13 17.8.1204, 17.8.1206,)
14 17.8.1212, 17.8.1213,)
15 17.8.1214, 17.8.1220,)
16 17.8.1224, 17.8.1226, and)
17 17.8.1232, pertaining to)
18 definitions and incorporation)
19 by reference of current)
20 federal regulations and other)
21 materials into air quality)
22 rules))

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24 **INTRODUCTION**

25 1. On January 29, 2003, I presided over and
26 conducted the public hearing held in Room 111 of the
27 Metcalf Building, 1520 East Sixth Avenue, Helena, Montana,
to take public comment on the above-captioned matter.

Notice of the hearing was contained in 2002 Montana
Administrative Register (MAR) No. 24, MAR Notice No. 17-
186, published on December 26, 2002, beginning at page
3468. A copy of the notice is attached to this report.

2. The hearing began at 10:45 a.m. and concluded at
10:53 a.m. Joyce Wittenberg recorded the hearing.

3. At the hearing I identified and summarized the
MAR notice, stated that copies of the MAR notice (proposed
amendments) were available in the hearing room, read the

1 Notice of Function of Administrative Rule Review Committee
2 as required by Mont. Code Ann. § 2-4-302(7)(a), informed
3 the persons at the hearing of the rulemaking interested
4 persons list and of the opportunity to have their names
5 placed on that list, recited the authority to make the
6 proposed rule amendments, announced the opportunity to
7 present matters at the hearing or in writing, as stated in
8 the MAR notice, and explained the order of presentation.

9 4. At the conclusion of the hearing, I announced
10 that the proposed rulemaking was expected to be considered
11 by the Board at its meeting on March 28, 2003.

12 SUMMARY OF HEARING

13 5. Jan Brown, Technical Support Section, Air and
14 Waste Management Bureau, DEQ, made a statement and
15 submitted a written statement. She described two
16 revisions to the proposed amendments pertaining to
17 17.8.302 and 17.8.801. She also submitted a memorandum
18 from Keith A. Jones, DEQ Legal Counsel, with HB 521 Review
19 and HB 311 Review and Private Property Assessment Act
20 Checklist. She also submitted a draft letter from the EPA
21 and stated that a final letter from the EPA was expected
22 to be submitted.

23 6. No other statements or writings were received at
24 the hearing.

25 SUMMARY OF ADDITIONAL WRITTEN MATERIALS

26 7. On January 31, 2003, EPA submitted a letter
27 similar to the draft received at the hearing.

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3 **PRESIDING OFFICER COMMENTS**

4 8. The Board has jurisdiction to adopt, amend, and
5 repeal rules for the administration, implementation, and
6 enforcement of the Clean Air Act of Montana. Mont. Code
7 Ann. § 75-2-111(1). The Board has specific authority to
8 issue rules establishing air quality standards,
9 establishing limitations of the levels, concentrations, or
10 quantities of emissions of various pollutants, and
11 relating to construction, installation, alteration,
12 operation, or use of equipment or facilities that may
13 cause air pollution. Mont. Code Ann. §§ 75-2-202, 75-2-
14 203, 75-2-204.

15 9. House Bill 521 (1995) generally provides that the
16 Board may not adopt a rule that is more stringent than
17 comparable federal regulations or guidelines, unless the
18 Board makes written findings after public hearing and
19 comment. The proposed rules are not more stringent than a
20 comparable federal regulation or guideline. Therefore
21 written findings are not necessary.

22 10. House Bill 311 (1995), the Private Property
23 Assessment Act, codified as Mont. Code Ann. § 2-10-101
24 through -105, provides that a state agency must complete a
25 review and impact assessment prior to taking an action
26 with taking or damaging implications. The proposed rules
27 may affect real property. A Private Property Assessment

1 Act Checklist was prepared in this matter. The proposed
2 rules do not have taking or damaging implications.
3 Therefore, no further HB 311 assessment is necessary.

4 11. The procedures required by the Montana
5 Administrative Procedure Act, including public notice,
6 hearing, and opportunity for comment, have been followed.

7 12. The Board may adopt the proposed rule
8 amendments, or reject them, or adopt the rules with
9 revisions not exceeding the scope of the public notice.

10 a. In this regard, many of the comments by the
11 EPA about the stack height rule, ARM 17.8.402, pertain to
12 subparagraphs of the rule that were not proposed to be
13 amended by this rulemaking. In my opinion, the adoption
14 of such EPA comments would be outside the scope of this
15 rulemaking.

16 b. EPA also commented about the proposed
17 amendments of ARM 17.8.101 that reference definitions in
18 Montana Code Annotated. The proposed amendments are
19 appropriate under the Montana Administrative Procedure Act
20 (MAPA). Section 2-4-305(2) begins, "Rules may not
21 unnecessarily repeat statutory language."

22 13. Under Mont. Code Ann. § 2-4-305(7), for any acts
23 in the rulemaking process to be valid, the Board must
24 publish a notice of adoption within six months of the date
25 the Board published the notice of proposed rulemaking in
26 the Montana Administrative Register, or by June 25, 2003.

27 Dated this _____ day of February, 2003.

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THOMAS G. BOWE
Presiding Officer